

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003  
(Filed June 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
ON UCAN'S NOTICE OF INTENT TO SEEK COMPENSATION**

The Utility Consumers' Action Network (UCAN) filed a Notice of Intent (NOI) to seek intervenor compensation for participation in this proceeding, pursuant to Pub. Util. Code § 1801 et seq. and Rule 76.71 et seq. of the Commission's Rules of Practice and Procedure.<sup>1</sup> Cingular Wireless (Cingular) filed a response to the NOI, after obtaining permission from the Administrative Law Judge (ALJ). As authorized by § 1804(b)(2), this ruling addresses certain issues raised by the NOI.

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<sup>1</sup> Unless otherwise indicated, all subsequent citations to sections refer to the Public Utilities Code, and all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

## **1. Timeliness**

Pub. Util. Code § 1804(a)(1) provides that an NOI must be filed and served within 30 days after the prehearing conference (PHC), unless no PHC is held or the proceeding is expected to be completed in less than 30 days. This NOI was filed on July 30, 2002, following a PHC on July 22, 2002. The NOI is timely.

## **2. Eligibility**

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a “customer” and that participation without compensation would pose a significant financial hardship.

### **2.1. Customer Status**

Section 1802(b) defines the term “customer” as:

“any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...”

Addressing this eligibility requirement, the Commission has indicated that a participant should explain how it meets the definition of customer and, if it is a group or organization, should provide a copy of its articles or bylaws, noting where in the document the authorization to represent the interest of residential ratepayers can be found. Further, a group or organization should indicate what percentage of its membership are residential ratepayers. (See Decision 98-04-059, *slip op.*, pp. 83 and 88.) The Commission has stated that if the current articles or by-laws have already been filed, the group or organization need only make a specific reference to such filing.

UCAN is a non-profit consumer advocacy organization that represents the interests of residential and small commercial customers of California's utility companies before this Commission. UCAN appended a copy of its articles of incorporation to the NOI it filed in Rulemaking (R.) 98-12-015 and subsequently, in that proceeding and in numerous other proceedings, has been found to represent residential customers within the terms of the 1802(b). As there had been no change in UCAN's status, I find that UCAN meets the statutory definition of "customer" for the purpose of 1802(b).

## **2.2. Significant Financial Hardship**

The second eligibility requirement is significant financial hardship, and with respect to a group or organization, § 1802(g) defines the term to mean: "... the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding."

Under § 1804(a)(2)(B), this showing may be made in the NOI, or alternatively, deferred until the request for compensation is filed. Under § 1804(b)(1), a finding of significant financial hardship creates a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of the finding.

The April 8, 2002 ALJ ruling in C.02-01-007 determined UCAN had made a showing of significant financial hardship. Since this proceeding was commenced within one year of that determination, the rebuttable presumption of eligibility applies here. Cingular challenges this presumption for reasons described below and then concedes that its challenge actually does not affect UCAN's eligibility for compensation, but rather other issues (e.g. unrealistic expectation for compensation under § 1804(b)(2)) that can be addressed in the ruling on the NOI. The basis of Cingular's challenge is that UCAN has filed a

class action against Cingular in Superior Court in San Diego County that contains allegations similar to those raised in this investigation. UCAN is the lead plaintiff as well as one of plaintiff's attorneys in that matter and seeks both monetary relief and attorneys' fees. Thus, Cingular argues that should UCAN prevail in this investigation and in the Superior Court proceeding, it could essentially recover twice for substantially the same work.

As Cingular admits, it has not established facts which rebut the presumption that UCAN's financial hardship showing should apply here--rather, Cingular's response goes to the recoverability of UCAN's costs, should UCAN ultimately be found to have made a substantial contribution to this proceeding. UCAN is eligible to file for an award of intervenor compensation at the conclusion of this proceeding. Any award is contingent upon a future showing that UCAN has made a substantial contribution, as required by statute.

UCAN will also need to show that it has avoided unnecessarily duplicating the effort and resources of the Consumer Protection and Safety Division, the staff division the Commission has charged to prosecute this investigation, or of the other intervenor in this proceeding, The Utility Reform Network (TURN). UCAN should ensure that its record keeping segregates the litigation costs of this investigation from the class action and that any costs that might be charged to either proceeding (or both) are reasonably apportioned between them.

### **3. Nature and Extent of Planned Participation; Estimate of Compensation**

UCAN states:

As an intervenor, UCAN has raised issues pertaining to Cingular's use of termination fees to compel customers to use service that is inconsistent with representations made by Cingular sales

representatives. UCAN will delve into Cingular's sales and service practices as they pertain to customer dissatisfaction with the company's coverage. Additionally, UCAN plans to be active in most, if not all, of the issues outlined in ... the scoping memo. (UCAN NOI at p. 2.)

The Commission will not attempt to carve out the areas or issues on which UCAN may focus free of all risk of unnecessarily duplicating other parties' efforts. UCAN was advised at the PHC at the time that its intervention was granted that it should coordinate with other parties to avoid duplication problems and this ruling reiterates that caution.

UCAN estimates, that absent settlement of this proceeding, it may incur as much as \$148,000 in expenses, as follows: \$108,500 in attorneys' fees (500 hours by its junior attorney at \$100/hour and 300 hours by its senior attorney at \$195/hour); \$15,000 in paralegal costs (200 hours at \$75/hour); \$20,000 in expert witness fees; and \$5,000 in miscellaneous costs. UCAN indicates that this estimate includes "fairly high pre-trial costs." UCAN's estimates are noted. This ruling makes no affirmative findings regarding the reasonableness of the total or any component of the estimate. UCAN is reminded that it bears the risk that some or all of its compensation request ultimately may be denied.

#### **4. Cingular's Obligation to Pay**

Cingular argues that because its rates are not based on Commission-determined costs, and thus, because the Commission cannot authorize "a dollar-for-dollar rate adjustment to rates" under § 1807 to ensure the utility recovers the costs of any intervenor compensation awards from its ratepayers, a legal questions arises as to whether Cingular is even subject to § 1801 et seq. Cingular suggest that this issue was left unresolved in D.98-04-059, which addressed the issues in the Commission's most recent, major intervenor compensation

proceeding, R.97-01-009/I.97-01-010, and suggests that the matter should be briefed. A closer reading of D.98-04-059 makes clear that the Commission considered and decided this matter, finding that in a competitive ratemaking regime, utility management may choose whether or not to factor the costs of intervenor compensation awards into rates. (See D.98-04-059, mimeo. at 61 and Conclusions of Law 12, 17; D.98-04-059, mimeo. at 3-7 [granting ltd. rehrgr. and modifying D.8-04-059 on other grounds.) Cingular is a “telephone corporation” under § 234 and as a “telephone utility” under § 1801.3, is subject to the intervenor compensation provisions of § 1801 et seq. No briefs are necessary.

**IT IS RULED** that:

1. Utility Consumers’ Action Network’s (UCAN) Notice of Intent (NOI) is deemed to have been timely filed on July 30, 2002.
2. UCAN is a customer, as defined by § 1802(b).
3. The April 8, 2002 Administrative Law Judge ruling in Case 02-01-007 found that UCAN had made a showing of significant financial hardship, as defined by § 1802(g). Because this proceeding was filed within one year of that ruling, § 1804(b)(1) creates a rebuttal presumption of eligibility.
4. Cingular Wireless' (Cingular) response to the NOI does not establish facts which rebut the presumption of that UCAN's significant financial hardship showing should apply to this investigation.
5. UCAN has fulfilled the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.

6. UCAN is eligible to file for an award of intervenor compensation at the conclusion of this proceeding. UCAN shall comply with the record keeping directives detailed in this ruling.

7. Cingular is subject to the intervenor compensation provisions of § 1801 et seq. and no briefs on this issue are necessary.

Dated August 28, 2002, at San Francisco, California.

/s/ JEAN VIETH

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Jean Vieth  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on UCAN's Notice of Intent to Seek Compensation on all parties of record in this proceeding or their attorneys of record.

Dated August 28, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.